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LABOUR & E. S. I. DEPARTMENT NOTIFICATION

The 10th April 2012

No. 2821—li/1(B)-30/2009(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14. of 1947), the Award, dated the 3rd February 2012 in Industrial Dispute Case No. 7/2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s NEM Engineering Project Pvt. Ltd., Jajpur and its Workman Shri Bhakta Charan Perai and others was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 7 OF 2010

Dated the 3rd February 2012.

Present :

Raghbir Dash, o.s.j.s. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of
M/s NEM Engineering Project Pvt. Ltd.,
C/o BRPL Kalinganagar Industrial
Complex, Jajpur Road, Jajpur.

First-party—Management

And

Second-party—Workmen

- Shri Bhakta Charan Perai,
S/o Late Hrushi Perai
aged about 38 years, Vill. Dhaapakshi,
P.O. Olala, P.S. Chorda,
Dist. Jajpur.

2. Shri Saluka Kalundia,
S/o Sursingh Kalundia,
aged about 42 years, Vill. Godapura,
P.O. Kurunti, P.S. Kalinganagar,
Dist. Jajpur.

3. Shri Adikanda Jena,
S/o Nrusingha Jena,
aged about 40 years, Vill. Udayanagar,
P.O. Arikana, P.S. Balichandrapur,
Dist. Jajpur.

4. Shri Dillip Kumar Nayak,
S/o Golak Bihari Nayak,
aged about 32 years, Vill. Mangalpur,
P.O. Danagadi, P.S. Kalinganagar,
Dist. Jajpur.

5. Shri Selai Purty,
S/o Sunia Purty,
aged about 45 years, Vill. Kumarlang,
P.S. Kira, Via Chakradharpur,
Dist. West Singhbhum, State Jharkhand..

Appearances :

Shri P. K. Panda, Administrative Officer Authorised Representative.	For the First-party—Management
Shri Diliip Kumar Nayak, Authorised Representative.	For the Second-party—Workmen

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') made by the Government of Odisha in the Labour & Employment Department vide their Order No. 1562—li/1(B)-30/2009, dated the 23rd February 2010. The Schedule of reference runs as follows :

"Whether the termination of services of Sarbashri Bhakta Charan Perai, Saluka Kalundia, Kumar Kisku, Adikanda Jena, Dillip Kumar Nayak and Selai Purty by the management of M/s NEM Engineering Project Pvt. Ltd. a contract establishment of M/s BRPL Kalinganagar Industrial Complex, Jajpur Road, Jajpur with effect from the 8th September 2008 is legal and/or justified ? If not, to what relief they are entitled ?"

2. The disputant workmen except Kumar Kisku have filed a joint claim statement wherein they have mentioned their respective designation, wages, date of joining and date of retrenchment in a tabular form which is reproduced hereunder :—

Sl. No.	Name of the workmen	Designation	Daily wages	Date of joining	Date of retrenchment
(1)	(2)	(3)	(4)	(5)	(6)
1	Bhakta Ch. Perai	Gas Cutter	Rs. 135	28-1-2008	8-9-2008

(1)	(2)	(3)	(4)	(5)	(6)
2	Saluka Kalundia	Rigger	Rs. 125	3-3-2008	8-9-2008
3	Adikanda Jena	Welder	Rs. 135	23-2-2008	8-9-2008
4	Dillip Ku. Nayak	Fitter	Rs. 140	19-2-2008	8-9-2008
5	Selai Purty	Gas Cutter	Rs. 130	18-2-2008	8-9-2008

Their case is that the first-party is a Contractor of Brahmani River Pellets Ltd., Kalinganagar which is an industrial establishment having not less than 100 workmen employed on an average per working day during the twelve months preceding 8-9-2008 which is the date of termination of the disputant workmen. According to the workmen, the first-party refused employment to them with effect from the 8th September 2008 even though work was available which is evident from the fact that after their retrenchment the management has taken other workers in their place. The specific case of the workmen is that three months' notice was necessary but the management did neither issue any such notice nor paid them wages in lieu of the notice period, besides retrenchment compensation. Thus, challenging the validity of the retrenchment they claim for their reinstatement with back wages.

3. Admitting that the disputant workmen were working under the first-party it is asserted by the latter that the services of the disputant workmen along with 17 others were terminated with effect from the 8th September 2008 on the ground of non-availability of work. It is further contended that since none of them had completed 240 days of work neither notice was served on them nor notice pay was offered to them. However, they were noticed to collect their dues but they intentionally refused to receive the same. According to the management, services of the second-party members were terminated on following the principle of 'last come and first go'. On the alleged availability of work, it is contended by the first-party that the disputant workmen were not highly skilled workmen. They had the skill to work at the ground and surface level. Such work was no more available for the workmen. Therefore, their services were terminated. Though erection work above 5 mtrs. is now going on the workmen being not highly skilled hands could not be engaged in such work.

4. In terms of the reference the following issues have been settled :—

ISSUES

(i) "Whether the termination of services of Sarbashri Bhakta Charan Perai, Saluka Kalundia, Kumar Kisku, Adikanda Jena, Dillip Kumar Nayak and Selai Purty by the management of M/s NEM Engineering Project Pvt. Ltd., a contract establishment of M/s BRPL Kalinganagar Industrial Complex, Jajpur Road, Jajpur with effect from the 8th September 2008 is legal and/or justified ?

(ii) If not, to what relief they are entitled ?"

5. Out of the five workmen who have filed claim statement four have presented themselves to be examined as W.W. Nos. 1 to 4. The management has examined its Manager (H.R. and Administration) as M.W. No. 1. Exts. 1 to 4 series are marked on behalf of the workmen and Exts. A to B series on behalf of the management.

FINDINGS

6. Issue No. (i)—Since the management takes the plea that none of the workmen have completed one year of continuous service it is to be first decided as to how far this contention is tenable. Amongst the five workmen who have filed their claim statement Shri Bhakta Charan Perai was the earliest to join in the establishment of the first-party. He joined on 28-1-2008. As already stated, all the workmen were retrenched with effect from the 8th September 2008. The total number of days from 28-1-2008 till 7-9-2008 comes to 223. Thus, it is found from the own pleadings of the workmen that they have not completed 240 days of work during the entire period of their employment under the first-party. Therefore, neither Section 25-F nor Section 25-N of the Act is applicable.

7. However, the other plea taken by the workmen regarding non-compliance of Section 25-G and/or 25-H of the Act needs careful scrutiny. Though the workmen while adducing evidence have stated that after their retrenchment the first-party has engaged other workmen to work in their place, they have failed to give any specific information on that bald statement. They express their inability to say as to who were engaged after their retrenchment. W.W. No. 1 has taken a new stand saying that after their retrenchment the first-party has engaged workers through contractors. But, the management in its written statement admits that work at the construction site is going on and highly skilled persons having the experience of doing erection work above 5 mtrs. have been recruited to continue the work above the ground and surface level. From the pleadings of the first-party there can be a valid presumption that services of the second-party workmen were terminated as they were considered not to be highly skilled persons to be engaged in erection work above 5 mtrs. and subsequent to their retrenchment recruitment of other workers who are said to be highly skilled was made and they are engaged in the erection work.

In this regard, the notice of retrenchment marked Ext. A may be taken into consideration. In Ext. A it is mentioned that services of 22 workmen were to be discontinued with effect from the 8th September 2008 on the ground of the management facing shortage of detailed Engineering Drawings for Fabrication as well as non-availability of Erection Fronts. That notice is silent about the additional ground taken in the written statement with regard to the workmen lacking inadequate skill to do erection work above 5 mtrs.

8. The above analysis may lead to a conclusion that the first-party while employing workmen to take up erection work above the ground level violated the provisions of Section 25-H of the Act. But, that is not the subject matter of the present reference. As per the terms of the reference the legality and/or justifiability of the termination of service of the workmen with effect from the 8th September 2008 is to be adjudicated. Even the conciliation failure report annexed to the order of reference does not disclose that the workmen had raised the dispute on the alleged violation of Section 25-H of the Act. Since there is no issue on the alleged violation of Section 25-H of the Act, the parties did not get any opportunity to adduce evidence to show either compliance or violation of the provisions contained in that Section. For example, there is no evidence as to whether the second-party workmen have the requisite skill to work above the surface level. There is also no evidence as to what is the time gap between the date of retrenchment of the second-party workmen and the date of the management taking up erection work above 5 mtrs. from the ground level. If at all there is any time gap then the cause of action with regard to the violation of Section 25-H of the Act could be different from that of the dispute which is under adjudication. The workmen can raise

another industrial dispute on the cause of action related to violation of Section 25-H of the Act. The termination of service has been effected without complying with Section 25-F of the Act. But then the workmen did not complete one year of continuous service. Though a plea is taken by the workmen that workmen junior to them have been allowed to work no evidence has been adduced to that effect. Therefore, the retrenchment cannot be said to be either illegal or unjustified. Merely because after the disputed retrenchment the first-party has recruited highly skilled persons who are experienced in doing erection work above 5 mtrs., the Tribunal cannot record a finding that the retrenchment of the workmen with effect from the 8th September 2008 is either illegal or unjust.

In the result, Issue No. (i) is answered against the second-party workmen.

9. Issue No. (ii)—Since the retrenchment of the second-party workmen is found to be either illegal nor unjust, the workmen are not entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH

3-2-2012

Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH

3-2-2012

Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor

T. K. PANDA

Under-Secretary to Government